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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. [redacted] 21

CHAMPLIN REFINING COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

STATEMENT AS TO JURISDICTION

HARRY O. GLASSER,
DAN MOODY,
Counsel for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Date of judgment and of application for appeal	2
Nature of case and rulings below	2
Cases sustaining jurisdiction	8
Appendices:	
A—Valuation order of I. C. C. No. 26	9
B—Valuation order of I. C. C. No. 27	10
C—Findings of fact and conclusions of law	11
D—Decree	18
E—Opinion	19

Cases Cited

The "Pipe Line Cases", 234 U. S. 548, 58 L. Ed. 1459	8
Valvoline Oil Co. v. *United States*, 308 U. S. 141, 84 L. Ed. 150	8

Statutes Cited

28 U. S. C. 41(28)	2
28 U. S. C. 44	2
28 U. S. C. 47	2
28 U. S. C. 47(a)	1
28 U. S. C. 345	2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559

CHAMPLIN REFINING COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent;

INTERSTATE COMMERCE COMMISSION,
Intervener

JURISDICTIONAL STATEMENT BY PETITIONER-APPELLANT UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

The petitioner-appellant respectfully presents the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above entitled cause sought to be reviewed.

A. Statutory Provisions

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539, as amended March 2, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. The Statute of a State, or Statutes or Treaty of the United States, the Validity of Which Is Involved

The validity of a statute of a state, or of a statute or treaty of the United States, is not involved.

C. Date of the Judgment or Decree Sought to Be Reviewed and the Date upon Which the Application for Appeal Was Presented.

The decree sought to be reviewed was entered on April 16, 1945. The petition for appeal was presented and allowed on April 16, 1945. On the same day an assignment of errors was filed.

D. Nature of Cause and Rulings Below

This is an appeal from a final decree of a specially-constituted three-judge District Court of the United States for the Western District of Oklahoma, entered April, 1945, dismissing and denying the petition of the Champlin Refining Company to enjoin and annul a certain order of the Interstate Commerce Commission.

The order in question was entered on July 12, 1944 in a proceeding entitled, Champlin Refining Company, Valuation of Pipe Line, Valuation Docket No. 1267, reported 49 Valuation Rep. 542-549 inc.

In the report of the Commission, *supra*, in support of its complained of order, it was in part said:

"In the original report in this proceeding, 49 Val. Rep. 463, division 2 found that the Champlin Refining Company, hereinafter generally referred to as the Champlin, is engaged in the transportation of refined petroleum products by pipe line in interstate commerce, and that it is a common carrier subject to the provisions of the Interstate Commerce Act. No order was entered, but the Champlin was directed to comply with orders under section 19a of the act, previously served upon it, and to furnish promptly the information called for therein. Such information is required for our use in valuing the properties of common carriers by pipe line. The Champlin thereupon filed a petition for rehearing, reargument, and reconsideration. The petition was granted, except as to rehearing, and reargument was heard.

"There is no dispute as to the statements of fact in the original report, but they will be repeated here in sufficient detail to furnish a clear understanding of the jurisdictional question which was the basis of the reargument. It is the position of the Champlin that, granting the facts to be as stated, it is not a pipe-line company as that term is defined in the Interstate Commerce Act; it is not engaged, in the operation of its pipe line, in interstate commerce as that term is defined in the Interstate Commerce Act; and it is not a common carrier.

"The Champlin is a corporation of the State of New Mexico, authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line which the Champlin owns and operates is a 516-mile gasoline pipe-line system consisting of

welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line, the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kans., Superior, Nebr., and Rock Rapids. The construction of the portion of the pipe line from Enid through Hutchinson to Superior, 256 miles, and the terminal facilities at Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

"The Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks, and other equipment, all more specifically described and enumerated in the original report. It also owns all of the stock of the Cimarron Valley Pipe Line Company which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid.

"In disposing of the petroleum products produced by it at its refinery at Enid, the Champlin uses two types of sales; one is known as the spot-market or date-of-shipment sale, the other, or contract sale, is based on yearly contracts with its customers. The spot, or f.o.b., price of the product at Enid is normally, based upon the Chicago Journal of Commerce 'Group 3' (Oklahoma) prices as shown in the issue of the Thursday preceding date of shipment. These prices are made effective at 7 a.m. Friday morning and remain in force until the next succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The delivered price includes, in addition to the spot or f.o.b. charge

at the Enid refinery, a charge called a differential which is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. The differential, therefore, represents the charge assessed by the Champlin for transporting petroleum products through its pipe line from the refinery to the pipe-line terminal.

* * * * * * *

"The facts were summarized in the original report in the following language:

'Summarizing these matters as of the date of the hearing, it appears that the Champlin is the sole owner of the products transported through its pipe line; it has never transported any products belonging to any other company; its pipe line has no connection with any other pipe line; there is no point at which any petroleum product can be put into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the storage tanks by means of truck racks or railroad tank-car racks and is not delivered directly from the pipe line in any instance; no tariffs have been filed with this Commission or with any State commission or regulatory body; and the right of eminent domain has never been assumed or exercised by the Champlin in connection with this pipe line.'

* * * * * * *

"We find that the Champlin is a common carrier of refined petroleum products by pipe line and that it is subject to the provisions of the Interstate Commerce Act. The findings of division 2 in the original report are accordingly affirmed.

* * * * * * *

"Chairman Patterson and Commissioner Porter dissent." The order so entered, among other things, provides:

"* * * * * * *

"It is Ordered, That the said Champlin Refining Company comply with the provisions of said Valuation Orders Nos. 26 and 27 within 90 days from the date of service hereof and as of December 31, 1943."

A copy of Valuation Order No. 26 is hereto attached. It includes detailed specifications and instructions for preparing maps, data, statement of corporate history, development of fixed physical property, schedules of lands, inventory of properties and other data required by the order to be filed with the Interstate Commerce Commission. The specifications and instructions are too voluminous to be copied as a part of this jurisdictional statement.

A copy of Valuation Order No. 27 is also hereto attached. It includes detailed instructions for preparing and filing the accounts and fact statements required by the order to be filed with the Interstate Commerce Commission. The instructions are too voluminous to be copied as a part of this jurisdictional statement.

On August 10, 1944 suit was filed by petitioner in the District Court of the United States for the Western District of Oklahoma, Civil No. 1559, challenging the authority of the Interstate Commerce Commission to enter the order complained of, supra, and praying,

"* * * * * * *

"2. That process may issue against the respondent, The United States of America, and that after not less than five (5) days' notice to the Interstate Commerce Commission and to the Attorney General of the United States, as provided by law, a hearing be held at Oklahoma City, Oklahoma, and an interlocutory injunction

be issued, staying and suspending the said order of the Interstate Commerce Commission.

"3. That upon final hearing of this cause a permanent injunction issue decreeing that said order of the Commission is null and void and its enforcement, execution and operation forever enjoined, and that The United States of America be restrained from issuing any further orders, instituting or further prosecuting any proceeding to enforce the aforesaid order or any subsequent orders relating thereto.

"* * * * * * * *"

The case was submitted on final hearing on October 12, 1944 before a specially-constituted three-judge court.

The questions presented by this appeal are substantial, and will determine whether a refiner of crude oil products may, without invoking the exercise of the right of eminent domain, but solely by the use of privately-obtained right-of-way, construct over and across state lines, a private seamless, welded steel products pipe line as a plant facility for the moving of such refiner's refinery products *only*, out of refinery operational tanks, into storage tanks distantly located in other states, for future sale by such refiner from such storage tanks only, without thereby dedicating such pipe line to the use of its competitors as a common carrier for hire, engaged in interstate transportation within the jurisdiction of the Interstate Commerce Commission.

A majority memoranda opinion was filed on March 21, 1945 upon which Circuit Judge Murrah and District Judge Chandler concurred in dismissing the complaint of the Champlin Refining Company, to which action District Judge Vaught filed a dissenting opinion.

The Champlin Refining Company thereupon filed its Petition for Rehearing, with certain exhibits thereto, which

was on April 13th, 1945 denied and overruled, to the entry of which order Judge Vaught dissented.

Special majority findings of fact and conclusions of law were entered and filed on April 16, 1945, in which conclusions of law this petitioner affirms the majority of the court failed to follow controlling decisions of this court.

Judge Vaught noted his dissent to the conclusions of law so entered and filed.

E. Cases Sustaining the Supreme Court's Jurisdiction on Appeal

The "Pipe Line Cases," 234 U. S. 548, 58 Law Ed. 1459.
Valvoline Oil Co. v. United States, 308 U. S. 141, 84 Law Ed. 150.

F. Decree and Findings of Fact and Conclusions of Law of the District Court

Appended to this statement is a copy of the majority findings of fact and conclusions of law of the District Court and copy of decree of said court sought to be reviewed, together with copy of the majority opinion and copy of minority opinion.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated April 16th, 1945.

HARRY O. GLASSER,
DAN MOODY,
Counsel for Champlin Refining Company.

APPENDIX A

Valuation Order No. 26—Revised

INTERSTATE COMMERCE COMMISSION

Washington, D. C.

ORDER

At a General Session of the Interstate Commerce Comsion, Division 1, held at its office in Washington, D. C., on the 31st day of December, A. D. 1934.

The subject of specifications for maps, charts, and schedules to be prescribed for and applied by common carriers by pipe lines being under consideration:

It is ordered, That the specifications for maps, charts, and schedules, Sections A to F, inclusive, a copy of which is filed with and made a part of this order, are hereby approved and adopted.

It is further ordered, That the said specifications for maps, charts, and schedules be, and the same hereby are, prescribed for the use of all pipe line companies subject to the provisions of the act to regulate commerce, as amended, in the preparation of all maps, charts, and schedules which shall be required to be prepared for or filed with this Commission in accordance with section 19a of the act to regulate commerce; that each and every company and each and every receiver or operating trustee of any such company be required to prepare and furnish to the Commission all maps, charts, and schedules in conformity herewith, and that a copy of said specifications be sent to each and every such company and to each and every receiver or operating trustee of any such company.

It is further ordered, That every pipe line company and each and every receiver or operating trustee of any such company shall prepare and furnish to the Commission in accordance with such specifications complete maps, charts, and schedules of its property as it exists on the date assigned for the valuation of that property within 60 days after such date of valuation; provided, however, that no such company shall be required to prepare or file any map,

chart, or schedule within less than 60 days from the receipt of written notice from the Director of the Bureau of Valuation, of this Commission, stating the date of valuation for such company.

It is further ordered, That Valuation Order No. 26, effective September 10, 1934, be, and it is hereby, superseded and cancelled as of the effective date of this order.

By the commission, division 1.

GEORGE B. MCGINTY,
Secretary.

[SEAL.]

APPENDIX B

Valuation Order No. 27

INTERSTATE COMMERCE COMMISSION

Washington, D. C.

ORDER

At a General Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the 12th day of April, 1935.

The subject of preparing a field inventory of the property of all common carriers by pipe lines for purposes of valuation under Section 19a of the Interstate Commerce Act, as amended, being under consideration:

It is ordered, That every common carrier owning or operating a pipe line whose property is subject to valuation under Section 19a of the Interstate Commerce Act, as amended, and every receiver or operating trustee of such a carrier shall prepare in duplicate and file with the Commission the original copies of a complete inventory of its property, except land, showing the quantities, units, and classes or kinds of property and the condition thereof.

It is further ordered, That such inventory shall be made as of such date as shall be prescribed by the Director of Valuation, shall begin within 30 days from the receipt from the Director of Valuation of written notice of this order and of the date of valuation prescribed, and shall be completed and filed within such time as he shall require, pro-

vided that he shall allow in all cases a reasonable time for the preparation and filing of such inventory which shall in no case be less than 30 days.

It is further ordered, That regulations and instructions to govern the preparation and filing of inventories of their property by carriers by pipe lines, are hereby approved and adopted, and a copy thereof is attached to and made a part of this order.

It is further ordered, That the said regulations and instructions be, and they are hereby prescribed for the use of all carriers by pipe line subject to the provisions of the Interstate Commerce Act, as amended, and all receivers or operating trustees of such carriers, in preparing and reporting inventories of their property as hereinabove required, and that a copy of said regulations and instructions be sent to each and every such carrier and to each and every receiver or operating trustee of any such carrier.

By the Commission, division 1.

GEORGE B. MCGINTY,
Secretary.

[SEAL.]

Endorsed: Filed in District Court, April 17, 1945.

APPENDIX C

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559—Civil

CHAMPLIN REFINING COMPANY, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent,*

INTERSTATE COMMERCE COMMISSION, *Intervenor.*

Findings of Fact and Conclusions of Law

The above-entitled suit coming on to be heard upon the pleadings and evidence, including the complete record of the proceedings before the Interstate Commerce Commis-

sion, and counsel for all parties having been heard, and briefs received and considered, and the Court being fully advised in the premises, and having made and filed its written opinion, makes the following findings of fact and conclusions of law:

Findings of Fact

1. This suit was brought under the provisions of the Urgent Deficiencies Act of October 22, 1913, to set aside an order of the Interstate Commerce Commission, made on June 12, 1944, in Valuation Docket No. 1267, and was heard and determined by a duly constituted court of three judges pursuant to the provisions of said Act. Said order of the Commission held that petitioner, Champlin Refining Company is a common carrier of refined petroleum products by pipe line and subject to the provisions of the Interstate Commerce Act, and required said company to comply with the provisions of Valuation Orders Nos. 26 and 27 issued by said Commission made pursuant to Section 19a of the said Interstate Commerce Act.

2. The petitioner Champlin Refining Company (hereinafter called the Champlin) is a corporation of the State of New Mexico authorized by its charter to produce, buy, sell, and transport petroleum, to refine petroleum, and to buy, sell, and deal in the refined products of petroleum. The pipe line involved in this suit, which the Champlin owns and operates, is a 516-mile petroleum products pipe line system consisting of welded 6-inch pipe extending from Enid, Okla., to Rock Rapids, Iowa. In connection with the pipe line the Champlin operates terminals with storage tanks as well as railroad and truck delivery facilities at Hutchinson, Kansas, Superior, Nebraska, and Rock Rapids, Iowa. The portion of the pipe line from Enid through Hutchinson and Superior, was completed in June 1935. The portion of the pipe line from Superior to Rock Rapids, 260 miles, and the terminal facilities at Rock Rapids were completed in May 1940. Storage facilities have been provided at the terminal stations with approximate capacities as follows: At Hutchinson, 161,000 barrels; at Superior, 191,000 barrels; and at Rock Rapids, 330,000 barrels. The total cost of the pipe

line and appurtenant facilities as of December 31, 1940, was $3,189,028.66.

3. In addition to the products pipe line involved in this suit, the Champlin also operates oil wells, an oil refinery, tank cars, filling stations, gasoline and oil bulk plants, oil trucks and other equipment including approximately 149 oil wells on 53 leases in Oklahoma, 45 wells on 13 leases in Kansas, and 52 wells on 10 leases in Texas; approximately 75,000 acres of undeveloped leases situated in Oklahoma, Kansas, Texas, New Mexico, Alabama and Illinois; the oil refinery at Enid, Oklahoma, which processes approximately four and a half million barrels of crude oil annually, producing a complete line of refined oil products; 723 tank cars used to transport the products of the refinery to company bulk plants or to jobbers; approximately 316 filling stations and 248 gasoline and oil bulk distribution tanks; motor trucks used to transport products and in the maintenance and operation of its pipe lines, and various other equipment used to promote the producing, purchasing, and refining of crude oil and the marketing of the products thereof.

4. It also owns all of the stock of the Cimarron Valley Pipe Line Company (hereinafter referred to as the Cimarron) which owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma, the principal source of crude oil for the Champlin's refinery at Enid. The pipe line involved in this case is not used as a gathering line and no crude oil is passed through it.

5. Construction of the portion of the products pipe line from Enid to Superior was undertaken by the Cimarron, which was then and now is, a common carrier operating wholly within the State of Oklahoma and a wholly owned subsidiary of the Champlin. The original purpose was to construct and operate a common carrier pipe line, and a certificate to that effect was issued to the Cimarron by the State of Kansas upon application by it. In connection with the acquisition of right-of-way for this construction, the Cimarron instituted four condemnation suits against seven individuals in the district courts in the State of Kansas, but while the suits were pending, satisfactory settlements were

made with the respective contesting owners of the lands, and the suits were dismissed by Cimarron. Before the line was completed or put into operation, the Cimarron on June 10, 1935, executed a bill of sale to the Champlin and made assignment of all rights-of-way that had been acquired in the construction of the property. Since that time the Cimarron has had nothing to do with the further construction or operation of the products pipe line. Construction of the pipe line was completed by Champlin, and operation thereof has been wholly by Champlin.

6. The crude oil from which the products transported by the Champlin in the products pipe line are produced is all originated in the State of Oklahoma and transported to the refinery at Enid by the Cimarron. All of the petroleum products transported through the line involved in this suit are owned by the Champlin. The products are transported beyond the three pipe line terminals f.o.b. either by rail or by common or contract carrier trucks to dealers and distributors, the carrier being designated by the purchaser, except that the Champlin operates five 3,750 gallon capacity transport trucks from the Rock Rapids terminals by which deliveries are made to company-owned outlets in North Central Iowa and Southern Minnesota, and to jobbers and dealers in the same territory. Other transport trucks, not owned by Champlin, are employed by the Champlin to haul refined products from the refinery and the three terminals of the pipe line to the 248 bulk tanks owned. From these bulk tanks local dealers and consumers are served by tank wagons owned and operated by the Champlin. The Champlin operates approximately 316 retail filling stations in the territory served by the pipe line.

7. In disposing of its petroleum products at its three terminals in Kansas, Nebraska, and Iowa, respectively, the Champlin uses two types of sales; one is known as the spot-market or date of shipment sale, the other, known as a contract sale, is based on yearly contracts with its customers. In spot sales the price of the product is normally based upon the Chicago Journal of Commerce "Group 3" (Oklahoma) prices at Enid as shown in the issue of the Thursday preceding date of sale. These prices are made

effective at 7:00 a. m. Friday morning and remain in force until the succeeding Friday, or until a change is made in the Chicago Journal of Commerce price for the particular product. The price of the product at the pipe line terminal used includes, in addition to the spot or f.o.b. price at the Enid refinery, an additional sum called a differential. Said differential is computed by subtracting from the through railroad freight rate from Enid to final destination (usually the purchaser's point of business) the carrying charges from the pipe line terminal to final destination. In other words, the so-called differential is adjusted so that the through charge to the final transportation destination of the product will equal the cost of the product at the refinery plus the through transportation cost from the refinery by rail, or other means, to final destination. Competitive and other conditions sometimes cause departures from the prices arrived at in accordance with the formula above described. Contract sales are likewise made upon the basis of Enid refinery price plus differential.

8. The Champlin is the sole owner of the products transported through its pipe line; it has never transported, offered to transport or been asked to transport any products belonging to any other company or person; its pipe line does not connect with any other pipe line but only with storage tanks at the three terminal points; there are no facilities for putting any petroleum product into the line other than at the Enid refinery; delivery of the products at the three terminal points is made from the Champlin's storage tanks by means of truck racks or railroad tank car racks and is not made directly from the pipe line in any instance; no tariffs stating transportation charges have been filed with the Interstate Commerce Commission or with any state commission or regulatory body.

9. The Champlin is a fully integrated oil company owning and operating, either directly or through its subsidiary the Cimarron, every facility necessary for the production and the transportation of crude oil by a gathering pipe line, the refining of such crude oil, the transportation by pipe line of the products of its refinery, and the distribution thereof either through jobbers, or directly, to the consuming public.

10. On August 21, 1941, the Champlin, following a demand by the Interstate Commerce Commission that it file with the Commission facts for valuation of the pipe line, filed with the Interstate Commerce Commission a petition alleging that it is not a common carrier subject to the provisions of the Interstate Commerce Act and praying that the Commission so determine its status. It prayed further that it be relieved of the requirement of filing the valuation reports prescribed by the Commission under the provisions of Section 19a of the Act, which reports had previously been demanded of the Champlin by the Commission's Bureau of Valuation.

The Commission by its Division 2 designated the proceeding in relation to said petition as Valuation Docket No. 1267 and assigned the same for hearing before a Commission examiner. When the matter came on for hearing on November 13, 1941, the Champlin filed an amended petition of the same general purport as that previously filed.

A large volume of evidence both oral and documentary was received at the hearing, and the matter was submitted to Division 2 of the Commission for determination; on December 14, 1942, said division made its report which is set out in the printed pamphlet filed by the plaintiff entitled "Exhibits to Petition", and is officially reported in volume 49 I. C. C. Valuation Reports, beginning on page 463. In said report it was held that the Champlin is engaged in the interstate transportation of refined petroleum products by pipe line, that it is engaged in interstate commerce and is a common carrier subject to the Interstate Commerce Act. The division concluded that no order was required at that time.

Upon petition of the Champlin the Commission reopened the proceeding for reargument before the entire Commission, and the Commission (with two members dissenting) on June 12, 1944, made its Report on Reargument in which the findings made by Division 2 in the prior report were affirmed; and the Commission ordered the Champlin to comply with the provisions of Valuation Orders Nos. 26 and 27. Said report of the Commission on reargument, is correctly set out in petitioner's "Exhibits to Petition" above re-

ferred to, and is officially reported in Volume 49 of I. C. C. Valuation Reports at page 549.

Conclusions of Law

The Court states the following conclusions of law:

1. That the Champlin Refining Company is a pipe line company and is a statutory common carrier of petroleum products by pipe line in interstate commerce, and is subject to the provisions of the Interstate Commerce Act applicable to such common carriers, including, in particular, Section 19a of said Act.

2. That the Interstate Commerce Commission had jurisdiction to enter the order complained of.

3. That the order which the plaintiff here seeks to set aside is a lawful and valid order of the Interstate Commerce Commission.

4. That the findings made in the two reports of the Commission above referred to are sufficient to support the Commission's order and that the evidence received by the Commission is sufficient to support said reports and order.

5. That the Interstate Commerce Act as construed by the Commission in said reports and order is not violative of any provision of the Constitution of the United States and that the Commission's order deprives the plaintiff of no constitutional right.

6. That the bill of complaint herein is without merit and should be dismissed at the cost of the plaintiff.

This 16th day of April, 1945.

Alfred P. Murrah,
United States Circuit Judge.
Stephen S. Chandler, Jr.,
United States District Judge.

I hereby dissent from the foregoing findings of fact and conclusions of law.

Edgar S. Vaught,
United States Dist. Judge.

Endorsed: Filed April 16, 1945, Theodore M. Filson, Clerk.

APPENDIX D

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559

CHAMPLIN REFINING COMPANY, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*;

INTERSTATE COMMERCE COMMISSION, *Intervener*

Final Decree

This cause having come on for final hearing and the Court having handed down its written opinion and made and filed its findings of fact and conclusions of law;

It is ordered, adjudged, and decreed, That the Plaintiff's petition be, and it is hereby, dismissed at the plaintiff's cost.

This April 16th, 1945.

ALFRED P. MURRAH,
United States Circuit Judge;
STEPHEN S. CHANDLER, JR.,
United States District Judge.

I dissent to the entry of this decree.

EDGAR S. VAUGHT,
United States District Judge.

Endorsed: Filed April 16, 1945, Theodore M. Filson, Clerk.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1559—Civil

CHAMPLIN REFINING COMPANY, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*,

and

INTERSTATE COMMERCE COMMISSION, *Intervening Defendant*

Before Murrah, Circuit Judge, and Vaught and Chandler, District Judges.

CHANDLER, *District Judge*, delivered the opinion of the Court:

This is a suit to enjoin, set aside and annul an order of the Interstate Commerce Commission, dated June 12, 1944, requiring plaintiff to comply with the provisions of the Commission's valuation procedure, as authorized by 49 U. S. C. A. s19A.

This Court's jurisdiction is based upon statutory provisions authorizing suit to be brought against the United States and requiring trial before a court of three judges, 28 U. S. C. A. 41 (28); 28 U. S. C. A. 45, 46, 47 and 48. These provisions refer to suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission.

Plaintiff, Champlin Refining Company, is a corporation organized under the laws of New Mexico with charter powers to produce, buy, sell and transport petroleum, to refine petroleum and to buy, sell and deal in the refined products of petroleum. It operates a refinery at Enid, Oklahoma, being authorized by the State of Oklahoma to do business within its borders.

The crude oil supplied to the refinery is obtained from numerous producing wells throughout the State of Oklahoma, some owned by plaintiff and some owned by other

parties. It is collected and brought to the Enid Refinery by pipe lines of plaintiff's wholly owned subsidiary, Cimarron Valley Pipe Line Company.

The pipe line under consideration extends from plaintiff's refinery at Enid, Oklahoma, across Kansas, Nebraska, and a part of South Dakota, to Rock Rapids, Iowa. The construction of the line was begun by the Cimarron Valley Pipe Line Company in 1935 and completed as far as Superior, Nebraska, in the latter part of that year. The Cimarron Valley Pipe Line Company sold and conveyed its pipe line to Superior, Nebraska, to the Champlin Refining Company on June 10, 1935, before it was ever used. An extension of the pipe line from Superior, Nebraska, to Rock Rapids, Iowa, was completed about May 1, 1940. The total cost of construction as of December, 1940, was $3,198,028.66.

The line is 516 miles long, constructed of six inch welded pipe, is seamless and has no connection with any other pipe line. It is so constructed and equipped that products can be discharged from it only at Hutchinson, Superior and Rock Rapids. Plaintiff operates storage tanks and railroad and truck delivery facilities at these terminals. All products transported are owned by plaintiff and refined at its refinery at Enid, Oklahoma.

Plaintiff sells the products transported over the pipe line in "spot-market" and "contract" sales in both of which types of transactions the purchaser pays an amount equal to the refinery price at Enid, Oklahoma, plus an amount designated as a "differential." This differential is an amount equal to the through railroad rate from Enid, Oklahoma, to destination, less the charges paid out by the purchaser for the short-haul transportation from the pipe line terminal to destination. The charges, however, are modified in some sales to meet the competitive prices made by other refineries.

The line is not used as a "gathering line" to bring crude oil to the refinery from the producing wells. The Cimarron Valley Pipe Line Company is employed for that purpose. It is what is known as a "products pipe line" used for the transportation of refined petroleum products. In the construction of the line, the right of way was secured

by purchase and not by condemnation proceedings. Some condemnation proceedings were instituted by the Cimarron Valley Pipe Line Company prior to the purchase of the line by the plaintiff, but subsequently were dismissed and the property purchased.

Plaintiff publishes no tariffs with the Interstate Commerce Commission, or any other regulatory body, and accepts no oil products for transportation for other parties, or the general public. It does not permit any person, firm, or corporation, other than itself, to use its pipe line, its facilities, or anything pertaining to them, as a means of transportation of petroleum or any other commodity.

The only question involved is whether plaintiff is a "pipe line company" within the terms of the Interstate Commerce Act.

In 1906 the Interstate Commerce Act was amended to read as follows:

> "SEC. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe line, * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad * * * from one State or Territory of the United States, * * * to any other State * * *." 34 Stat. 584.

In 1920 the Act was further amended to read as follows:

> "(1) That the provisions of this Act shall apply to common carriers engaged in—
>
> * * * * * * *
>
> "(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, * * *.
>
> "(c) * * * from one State * * * to any other State * * *.
>
> * * * * * * *

"(3) The term 'common carrier' as used in this Act shall include all pipe line companies; * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. * * *" 41 Stat. 474. * * *

"19a. That the commission shall as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act." 37 Stat. 701. (49 U. S. C. A. § 1, 19A)

The construction of the Act was before the Court in Pipe Line Cases, 234 U. S. 548; 58 L. Ed. 1459, and Valvoline Oil Company v. United States, 308 U. S. 141; 84 L. Ed. 151.

In Pipe Line Cases the Court was considering interstate pipe lines already engaged in transportation at the time of the passage of the 1906 amendment. The matter under consideration was the constitutionality of the act as applied to such companies. It held that certain of the companies were common carriers in substance if not in form and fell within the coverage of the Act even though engaged in the business at the time of the amendment.

With reference to the Standard Oil Company of Louisiana which was incorporated after the passage of the amendment, the Court held the act applicable for this same reason or because it entered the business of interstate transportation of oil by pipe line after the passage of the 1906 amendment.

As to the Uncle Sam Oil Company, the Court held that, being engaged only in transporting its own oil for its own use, the transportation involving neither purchase nor sale, such transportation was not transportation in commerce. The Court also undoubtedly took into consideration the fact that the company, having entered the field as a purely private pipe line prior to the passage of the 1906 amendment and having vested rights, arbitrary classification of such line as a common carrier would be unconstitutional.

The Uncle Sam Oil Company case must be distinguished from the instant case upon the ground that plaintiff is transporting oil products *to market for sale to the public* and thus

is engaged in transportation in commerce within the meaning of the Act. The time of transfer of title, whether at Enid, Oklahoma, or at Hutchinson, Superior, Rock Rapids or at purchaser's place of business, is technical. In either instance the public pays the transportation charge. A charge or "differential" equal to rail rates is added in "spot-market" sales to the current price of the oil products at Enid, Oklahoma, on the date of the delivery. In "contract" sales the products are sold at contract price for an agreed period of time plus this same "differential."

In either "spot" or "contract" sales the effect on the public is the same as if title passed to the purchaser at the refinery. The purpose of the broad coverage of the Act was to make it impossible for pipe line carriers to escape its terms upon such technicalities.

In the Valvoline Oil Company case, the company asserted that the oil flowing through its lines was not in commerce until *after* preparation for market, thereby admitting that after such preparation the transportation would be in commerce. In the instant case, the products are refined products being transported to market and are, therefore, transported in commerce.

We think the foregoing conclusions are inescapable from consideration of the plain terms of the Act and the following quotation from the opinion in Pipe Line Cases:

> "*The only matter requiring much consideration is the constitutionality of the act.* That the transportation is commerce among the states we think clear. That conception cannot be made wholly dependent upon technical questions of title, and the fact that the oils transported belonged to the owner of the pipe line is not conclusive against the transportation being such commerce. The situation that we have described would make it illusory to deny the title of commerce to such transportation, beginning in purchase and ending in sale for the same reasons that make it transportation within the act. The control of Congress over commerce among the states cannot be made a means of exercising powers not intrusted to it by the Constitution, but it may require those who are common carriers in sub-

stance to become so in form. *So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation.*" (Emphasis supplied.)

Plaintiff attempts to demontrate that it does not fall within the coverage of the Act by asserting that it is not in fact a common carrier. The Act makes it a *statutory* common carrier.

The fact, if true, that plaintiff is a private carrier is immaterial since it is covered by the Act and chose to enter the business of transportation of oil products after the enactment thereof.

In our opinion, the plain meaning of the Act as amended is that its provisions apply to *all engaged in the interstate transportation of oil or other commodities, except water and except natural or artificial gas, by pipe line.*

The Act states that its provisions shall apply to "common carriers engaged in * * * the transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line". It then defines the term "common carrier" to include "all pipe line companies * * * and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire".

In the Valvoline Oil Company case the Court, in referring to the last clause of the definition of "common carrier" said:

> "This clause is a conjunctive and not a modifier. It does not affect the generality of the first clause as to pipe-line companies."

The Court said in the Pipe Line Cases in construing the 1906 Amendment:

> "The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines."

Congress intended to include all pipe lines without regard to whether they were private lines or carried for the public.[1]

In the Valvoline Oil Company case the Court held that the provision in the 1920 amendment that the Act applied to "all pipe line companies" did not narrow the coverage of the Act. *We think this change in verbiage was made for the purpose of making it clear, if any doubt was created by the Uncle Sam Oil Company decision, that all future pipe lines engaged in the interstate transportation of oil or other commodities, except water and natural or artificial gas, were covered by its terms.*

The contention is made that plaintiff is not an interstate pipe line company; that it is a refining company. It is authorized by its charter, among other things, to transport petroleum. It produces and purchases oil, and through its wholly owned subsidiary, Cimarron Valley Pipe Line Company, transports it by pipe line from points in Oklahoma to its refinery at Enid, Oklahoma, and after refining, transports the products *from* its refinery through its own line to Kansas, Nebraska and Iowa for the purpose of sale. Plaintiff could just as logically take the position that it is a "producer" or "carrier".

Valvoline Oil Company was engaged in the refining business, had similar charter powers, and transported oil *to* its two refineries. The Court there stated:

> "There is no controversy over whether appellant is an interstate pipe line company. *Obviously it is.*" (Emphasis supplied.)

As in the Valvoline Oil Company case, plaintiff claims that to hold the Act applicable to it amounts to the taking of its property without due process of law. This contention

[1] An amendment was suggested in the Senate limiting the coverage to pipe lines "carrying for the public". Senator Lodge opposed this and in sponsoring the amendment as passed stated:

> "But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come, under this rule, will, as the Senator from Minnesota (Mr. Nelson) says, absolutely destroy the value of my amendment." 40 Cong. Rec. 6361-65.

is answered by the Court in the Pipe Line Cases. Plaintiff is a "future" pipe line company.

Plaintiff's petition to enjoin and annul the order of the Interstate Commerce Commission should be dismissed. Defendant is requested to prepare and submit findings of fact, conclusions of law and judgment in accordance with the views herein expressed.

VAUGHT, District Judge, dissenting:

I regret the necessity of disagreeing with the majority opinion.

In the majority opinion, however, the facts are fairly and clearly stated, as well as the issue of law.

Were we considering the Act of Congress, (49 U.S.C.A. sec. 1(3)) for the first time, I might be constrained to agree with my associates in their conclusion. However, the Supreme Court has considered this very question in The Pipe Line Cases, 234 U. S. 548, and Valvoline Oil Company vs. United States et al., 308 U. S. 141.

The question at issue is whether or not, for the purposes of valuation, the pipe line of the plaintiff is a common carrier within the terms of Section 1, Chapter 1, of the Act. (49 USCA 1.)

The suit also involves the question of whether the required compliance with the Commission's valuation order would constitute a violation of the Constitution of the United States, by taking property of the plaintiff without just compensation, depriving it of its property without due process, or denying it equal protection of the law.

The pertinent sections of the statute are as follows:

49 U. S. C. A. sec. 1:

> "(1) The provisions of this chapter shall apply to common carriers engaged in—
>
> . . . . . .
>
> "(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water:

(c) * * * from one State * * * to any other State * * *.

* * * * * * *

"3) Definitions. The term 'common carrier' as used in this chapter shall include all pipe-line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. * * *"

49 U. S. C. A. sec. 19a:

"(a) The commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this chapter.

* * * * * * *

"(e) Every common carrier subject to the provisions of this chapter shall furnish to the commission or its agents from time to time and as the commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, * * *."

This case involves the interpretation of the statute as it pertains to the facts presented, and the distinguishing features, if any, between the facts shown in The Pipe Line Cases, supra, and Valvoline Oil Company vs. United States et al., supra.

In The Pipe Line Cases, the court had under consideration the act as it was amended June 29, 1906, 34 Stat. 584, (known as the Hepburn Act), in which section 1(3), then read:

"That the provisions of this Act shall apply to any corporation or any person or persons engaged in the

transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *."

In the body of the opinion at page 559, the court said:

"* * * The main question is whether the act does and constitutionally can apply to the several constituents that then had been united into a single line.

"Taking up first the construction of the statute, we think it plain that it was intended to reach the combination of pipe lines that we have described. The provisions of the act are to apply to any person engaged in the transportation of oil by means of pipe lines. The words 'who shall be considered and held to be common carriers within the meaning and purpose of this act' obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such. * * * Its evident purpose was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

* * * * * * *

"* * * So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there can be no doubt that it is valid. So the objection is narrowed to the fact that it applies to lines already engaged in transportation. But, as we already have intimated, those lines that we are considering are common carriers now in everything but form. They carry everybody's oil to a market, although they compel outsiders to sell it before taking it into their pipes. * * *"

In that case the Standard Oil Company controlled a number of pipe lines of other organizations, which, when taken together, formed a pipe line for transportation of oil across several states, and as stated by the court, at page 559:

> "* * * To meet the present amendment the Standard Oil Company took a conveyance of the New Jersey and Maryland lines, and the common carrier lines now end at insignificant places where there are neither market nor appliances except those of the Standard Oil, by which it would seem that the whole transport of the carriers' lines is received. * * *
>
> "Availing itself of its monopoly of the means of transportation the Standard Oil Company refused through its subordinates to carry any oil unless the same was sold to it or to them and through them to it on terms more or less dictated by itself. * * *"

There can be no question but that the oil thus transported, at the time of its transportation, was owned by the Standard Oil Company and that it was transporting its own oil through its own pipe line. The court then considered the Uncle Sam Oil Company and held that the facts as to that company did not fall within the description of the act as the transportation by that company was "merely an incident to use at the end," and said:

> "There remains to be considered only the Uncle Sam Oil Company. This company has a refinery in Kansas and oil wells in Oklahoma, with a pipe line connecting the two which it has used for the sole purpose of conducting oil from its own wells to its own refinery. It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end. * * *"

The plaintiff contends it falls squarely within the holding as to the Uncle Sam Oil Company.

In Valvoline Oil Company v. United States, supra, Valvoline Oil Company owned a pipe line of 1,426 miles running to 9,020 wells in three states, into which it gathered some 75,000 barrels of oil per month for its two refineries in Pennsylvania which manufactured the products to be distributed to its trade. All of the oil was purchased from producers at the well, 50 per cent. originating in Pennsylvania, 38 per cent. in West Virginia, and 12 per cent. in Ohio. Surplus oil, not needed in its operations in its refineries, was sold to refineries in Pennsylvania and West Virginia; none of which came out of the state of the refinery. Because it did not transport interstate other oil than that which it purchased at the well for its own use, it claimed it was not a common carrier of oil subject to the Interstate Commerce Act, nor that it should be held to come within the terms of the statute. It contended that it was not a common carrier within the provisions of the act, that its pipe line was used primarily to transport oil to its own refineries, and that such transportation was not clothed with a public interest. The court, in passing upon the issues, said (p. 145):

> "In the present Act there is a change of language but we perceive none in meaning. Speaking of the amendments of the Transportation Act of 1920, which recast the Hepburn Amendment into the present form, the House Committee on Interstate and Foreign Commerce reported that the section here under consideration 'amends the first five paragraphs of section 1 of the Commerce Act, making minor corrections and classifying language in several respects, but making no important changes in policy.' As now written the section brings railroads under the Act by means of the last clause of subsection (3) only. This clause is a conjunctive, not a modifier. It does not affect the generality of the first clause as to pipe-line companies.
>
> "The appellant relies upon the Pipe Line Cases to show that the present act does not cover a pipe line transporting oil for its own refining purposes only.

> The discussion referred to is that concerning the Uncle Sam Oil Company. But that company's pipe line was used for the *'sole purpose of conducting oil from its own wells to its own refinery.'* This was held not to be transportation under the Act. Here, however, *it is the purchase from many sources* and subsequent carriage that determine the applicability of the statute to Valvoline.'' (Emphasis supplied.)

Under the holding in The Pipe Line Cases it was determined that not every "pipe line" that may be engaged in the transportation of oil is a common carrier, within the terms of the statute, even though it transports oil across state lines, and the Uncle Sam Oil Company's line was held to be an exception. In the Valvoline Case that distinction under the statute as amended was recognized and maintained, the court saying: "But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.'" While in The Pipe Line Cases the court said: "When, as in this case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end."

Let us now consider the facts in The Pipe Line Cases and the Valvoline Case as distinguished from the facts shown in the instant case.

In The Pipe Line Cases the Standard Oil Company owned or controlled the pipe lines, which were engaged in transporting the oil from many owners. The court described the situation as follows, (234 U. S. 559):

> "Availing itself of its monopoly of the means of transportation the Standard Oil Company refused through its subordinates to carry any oil unless the same was sold to it or to them and through them to it on terms more or less dictated by itself. In this way it made itself master of the fields without the necessity of owning them and carried across half the

continent a great subject of international commerce coming from many owners but, by the duress of which the Standard Oil Company was master, carrying it all as its own. * * *"

* * * * * * *

"* * * It not only would be a sacrifice of fact to form but would empty the act if the carriage to the seaboard of nearly all the oil east of California, were held not to be transportation within its meaning, because by the exercise of their power the carriers imposed as a condition to the carriage a sale to themselves. * * * Its evident purpose was to bring within its scope pipe lines that although not technically common carriers yet were carrying all oil offered, if only the offerers would sell at their price."

In the instant case we have none of these distinguishing features. The Champlin Refining Company is not engaged in "carrying all oil offered" but is carrying only its own refined product. It is not monopolizing "the means of transportation" of oil. It is not refusing to carry oil unless it is sold to it on its terms or any other terms. It simply is not engaged in carrying any oil except its own product, refined at its own refinery, and transported for its own use to its own terminals.

In the Valvoline Case, the Valvoline Oil Company had two refineries in Pennsylvania. Its pipe lines embraced 1,426 miles which ran to 9,020 wells located in Pennsylvania, West Virginia, and Ohio. It gathered from these wells some 75,000 barrels of oil per month for the purpose of refining the produce to be distributed to its trade. It could not use all the oil so gathered in its refineries and sold the surplus to other refineries, located one in Pennsylvania and one in West Virginia. I think the court distinguishes the fact situation in the Valvoline Case from the case at bar when it said: "*Here, however, it is the purchase from many sources and subsequent carriage that determine the applicability of the statute to Valvoline.*"

In the instant case the Champlin Refining Company is not gathering through its pipe line the product it transports. The product it transports originates at its own refinery at Enid, Oklahoma. As so originated, it is owned by the company in its entirety, the pipe line being "merely an incident to use at the end," which is the marketing of its product. And, as stated by the court in the Valvoline Case, supra, in distinguishing between the facts there shown and the facts shown in The Pipe Line Cases, as to the Uncle Sam Oil Company: "But that company's pipe line was used for the 'sole purpose of conducting oil from its own wells to its own refinery.' This was held not to be transportation under the Act."

Is the general public interested in such transportation as shown in the case at bar? The record does not disclose that anyone has sought to have oil transported through this pipe line. It does not disclose that the company transports any product but its own, nor that it holds itself out to the public as a carrier of the product of any who offer to avail themselves of its facilities, but on the contrary, it discloses that the line is constructed and maintained in such a manner that such facilities would not be available to any such transportation. It merely shows that the Champlin Refining Company refines its own product at its own refinery and transports it to market with its own facilities, for its own use, which use is to place it on the market. Certainly, the fact that the plaintiff added to the price of its products at its terminals what it considered to be a fair sum to cover the cost of transportation, would not and could not interest the buying public. It would have to compete with others at the market who were offering products of a like kind. The record discloses that its means of transportation had cost a large sum of money and that it had to maintain its transportation facilities, if it was an "incident to use at the end."

There is a distinct difference between a pipe line engaged in *interstate commerce* and a pipe line which is a *common carrier*. In the first instance the pipe line may or may not be a common carrier. The determining factors are the use to which the pipe line is put and the statute which defines "common carrier."

If a pipe line is not operated for hire, then the statute, as construed by The Pipe Line Cases and the Valvoline Case, would not apply.

For the foregoing reasons, therefore, I respectfully dissent to the majority opinion.

Endorsed: Filed March 21, 1945. Theodore M. Filson, Clerk.

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